

**Internal Revenue Service**

**Department of the Treasury**

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**Washington, DC 20224**

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**P =**

**S1 =**

**Newco =**

**Newco S3 =**

**S2 =**

**BF1 =**

**BF4 =**

**Newco BF1 =**

**Business B1 =**

Business B2 =

Country B =

Dear

This letter responds to your June 30, 1998 request that we supplement our ruling letter dated November 12, 1997.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by appropriate parties. The Internal Revenue Service may require verification of the facts and representations as part of the audit process.

### **Summary of Facts**

P, a domestic corporation, is the common parent of a consolidated group. P wholly owns S1 and Newco, both domestic corporations. Newco wholly owns S2 and Newco S3, both domestic corporations. Except for nominal interests held by affiliates and individuals to meet foreign country legal requirements ("Nominal Interests"), P also wholly owns BF1, a Country B corporation, and Newco also wholly owns Newco BF1, a Country B corporation.

We have received financial information indicating that Business B1 and Business B2 of Newco BF1 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past 5 years.

### **Proposed Transaction**

To save substantial Country B taxes, the following transaction is proposed:

(i) Newco S3 will form a new Country B company ("Newco BF3") with a cash contribution funded by a cash contribution from Newco. S2 will hold a Nominal Interest in Newco BF3 to qualify Newco BF3 as a limitada under Country B law.

(ii) Newco BF3 will use the cash from step (i) to purchase from Newco BF1 the Business B2 assets, subject to liabilities. Following the transfer, Newco BF3 will be responsible for the operation of Business B2, and Newco BF1 will be responsible for the operation of Business B1.

(iii) Newco BF1 will distribute to Newco the cash received from Newco BF3 in step (ii).

### **Representations**

P makes the following representations concerning the transfer of Business B2 assets, subject to liabilities, by Newco BF1 to Newco BF3, followed by the distribution of Newco BF3 stock by Newco BF1 to Newco, and the transfer of Newco BF3 stock by Newco to Newco S3 (based on the characterization of steps (i) through (iii) above by ruling (1) below):

(a) No part of the consideration distributed by Newco BF1 to Newco will be received by Newco as a creditor, employee, or in any capacity other than that of a shareholder of Newco BF1.

(b) The five years of financial information submitted on behalf of Business B1 and Business B2 represents the present operation of each business, and with regard to each, there have been no substantial operational changes since the date of the last financial statements submitted.

(c) Following the transaction, Newco BF1 and Newco BF3 will each continue the active conduct of its business, independently and with its separate employees.

(d) The distribution of Newco BF3 stock is being carried out as part of a plan to minimize Country B taxes. The distribution of Newco BF3 stock is motivated, in whole or substantial part, by this corporate business purpose.

(e) Apart from the contribution by Newco of the Newco BF3 stock to Newco S3, there is no plan or intention on the part of Newco to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Newco BF1 or Newco BF3 after the transaction.

(f) There is no plan or intention by either Newco BF1 or Newco BF3, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.

(g) There is no plan or intention to liquidate either Newco BF1 or Newco BF3,

to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

(h) The total adjusted basis and the fair market value of the assets transferred to Newco BF3 by Newco BF1 each equals or exceeds the sum of (i) the liabilities assumed by Newco BF3, (ii) any liabilities to which the transferred assets are subject, and (iii) the fair market value of any other property (including money) distributed to Newco BF1 shareholders under the plan of reorganization or to Newco BF1 creditors in connection with the reorganization.

(i) The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the transferred assets.

(j) No intercorporate debt will exist between Newco BF1 and Newco BF3 at the time of, or after, the distribution of Newco BF3 stock.

(k) Payments made in all continuing transactions among BF1, Newco BF1, and Newco BF3 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(l) No two parties to the transaction are investment companies under §§ 368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.

(m) Newco BF1 and Newco BF3 are foreign corporations that are controlled foreign corporations as defined in § 957. Neither corporation is or will become as a result of the transaction a passive foreign investment corporation.

### **Rulings**

Based solely on the information submitted and the representations set forth above, and provided that (i) Newco BF1 and Newco BF3 are foreign corporations and (ii) the requirements of paragraphs (c) and (d) of § 7.367(b)-1 of the Temporary Income Tax Regulations and all the conditions and requirements of §§ 7.367(b)-4 through 7.367(b)-12 are met, we rule as follows on the transaction described above in steps (i) through (iii):

(1) For federal income tax purposes, the proposed transaction described in steps (i) through (iii) above will be treated as if (i) Newco BF1 had formed Newco BF3 and transferred its Business B2 to Newco BF3 in exchange for Newco BF3 stock and

the assumption by Newco BF3 of related liabilities (the "Contribution"), (ii) Newco BF1 had distributed all the stock of Newco BF3 to Newco (the "Distribution"), and (iii) Newco had transferred the stock of Newco BF3 to Newco S3 (Rev. Rul. 77-191, 1977-1 C.B. 94).

(2) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Newco BF1 and Newco BF3 will each be "a party to a reorganization" under § 368(b).

(3) No gain or loss will be recognized by Newco BF1 on the Contribution (§§ 361(a) and 357(a)).

(4) No gain or loss will be recognized by Newco BF3 on the Contribution (§ 1032(a)).

(5) The basis of each Business B2 asset received by Newco BF3 will equal the basis of that Business B2 asset in the hands of Newco BF1 immediately before the Contribution (§ 362(b)).

(6) The holding period of each Business B2 asset received by Newco BF3 from Newco BF1 will include the period during which that Business B2 asset was held by Newco BF1 (§ 1223(2)).

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Newco on its receipt of the Newco BF3 stock in the Distribution (§ 355(a)(1)).

(8) No gain or loss will be recognized by Newco BF1 on the Distribution (§ 361(c)).

(9) The holding period of the Newco BF3 stock received by Newco will include the holding period of the Newco BF1 stock on which the Distribution is made, provided Newco held the Newco BF1 stock as a capital asset on the date of the Distribution (§ 1223(1)).

(10) The exchange described in ruling (7) is a transaction to which § 7.367(b)-10(c) of the Temporary Regulations applies, and the requirements of paragraphs (d) through (j) of § 7.367(b)-10 must be satisfied.

(11) The earnings and profits of Newco BF3, to the extent attributable to such stock under § 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in taxable years beginning after December 31, 1962, during the period Newco held the

Newco BF3 stock (or was considered as holding it by reason of the application of § 1223) while Newco BF3 was a controlled foreign corporation will be attributable to such stock held by Newco S3 (§ 1.1248-1(a)(1)).

### **Caveats**

We express no opinion on the tax effects of the transaction under any other provisions of the Code or regulations, or the tax effects of any condition existing at the time of, or effect resulting from, the transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed on (i) whether the transfer described above in ruling (1)(iii) will qualify under § 351.

### **Procedural Matters**

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in this transaction should attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the transaction is consummated.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your representative.

Sincerely yours,  
Assistant Chief Counsel (Corporate)

By:   
Wayne T. Murray  
Senior Technician/Reviewer, Branch 4